IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

LPA NO. 21 OF 2007

JAIPRAKASH KAILASHNATH UPADHYAY ... APPELLANT.

VS.

ADISHAKTI HINDI PRACHAR SAMITI

THROUGH THE SECRETARY AND ORS. ... RESPONDENTS.

M.S.LAGU H/F. N.R.BUBNA FOR THE APPELLANT.

C.K.THOMAS FOR RESPONDENT NO. 1 & 2.

MR. R.M.PATNE AGP FOR THE RESPONDENT NO.3.

CORAM : J.N.PATEL & A. A. SAYED, JJ.

DATE : June 18, 2007.

P.C.

1. Heard the learned Counsel for the parties.

2. Taking into consideration the case of the parties, we are of the view that the LPA can be disposed of at the stage of admission itself. Therefore, we have heard the parties at length.

3. The Appellant challenged the Order passed by the School Tribunal, dated 7.5.2005 dismissing his appeal on the ground that the same was beyond the

period of limitation.

4. It was brought to our notice that the observation of the learned Single Judge i.e. an appeal was filed before the School Tribunal, challenging the Order dated 7.5.2005, was probably due to inadvertence for the reason that the Writ Petition was filed challenging the Judgment and Order dated 7.5.2005, passed by the learned President of Grievance Committed which entertained the complaint Under Section 7 of the Act. This fact situation is not disputed.

5. The only issue, which arises for consideration is "whether the impugned Order, passed by one member committee, dismissing the appeal on the ground of delay was appropriate".

6. The learned Single Judge has dismissed the petition on the ground that the findings of the Grievance Committee as regards delay in preferring the Appeal does not call for any interference in the limited exercise of jurisdiction under Section 227 of the Constitution of India, as the discretion exercised by the said Committee rejecting the request for condonation of the delay in filing the Appeal cannot be said to be illegal, perverse or arbitrary.

7. In our view, taking into consideration the peculiar facts and circumstances, which have been narrated by the appellant, in submitting that the Grievance Committee could have considered the case of the appellant for condonation of the delay but as there was no application filed for the said purpose, the Grievance Committee was justified in rejecting the appeal, which was preferred beyond the period of limitation.

8. It is submitted by the learned Counsel for the appellant that there is no time period prescribed for preferring an Appeal before the Grievance Committee and on this count also, the Order of the Grievance Committee cannot be sustained.

9. It is pointed out to us by the learned Counsel for the Respondents that if no specific period of limitation is provided, even then the provisions of the Limitation Act would be squarely applicable to the case under the Residuary Clause of the Limitation Act, which provides three years period for preferring an Appeal in such cases and the present Appeal was preferred even beyond the prescribed period of three years.

10. In our view, the dismissal of the appeal by the Grievance Committee on the count of the delay for the

fault of the Appellant to make an application for condonation of the delay, has resulted in miscarriage of justice. Probably the fault can be attributed to lack of legal advise on the part of the Counsel representing the Appellant. It is a well settled principle of law that a litigant should not suffer for the fault of his Lawyer. Therefore, a fair opportunity can be granted to the Appellant to approach the Grievance Committee by granting liberty to the appellant to move an application for condonation of the delay, which obviously would be considered on merits, after hearing the parties.

11. Consequently, we quash and set aside the impugned Order with liberty to the Appellant to move the Grievance Committee by filing an application for condonation of the delay within a period of four weeks from the date of passing of this Order.

12. This Court makes it clear that if such an application is made, the Grievance Committee would hear the parties after giving the parties notice and fair opportunity and decide the application afresh without being influenced by its previous Order.

13. We, however, make it clear that if any such application is made beyond the stipulated period

granted by this Court, the leave granted by this Court to move the Grievance Committee shall stand rejected.

14. With these observation, the Appeal stands disposed of with no Order as to costs.

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[A. A.Sayed, J] [J.N.Patel, J.]